IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11097 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL VITTHALBHAI SHIVABHAI
Versus
STATE OF GUJARAT AND ANOTHER

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Appearance :
MR AJ PATEL for the Petitioner(s) : 1,
MR AJ DESAI, ASST. GOVERNMENT PLEADER for respondent no. 1
MR YN OZA for Respondent No. 2.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 11/10/2005

ORAL JUDGMENT

By filing this petition, the petitioner has challenged the order dated 30.11.1998 passed by the Additional Chief Secretary (Appeal), Revenue Department, Ahmedabad in Revision Application whereby he confirmed the order dated 21.6.1997 passed by Collector, Kaira in RTS No. 76 of 1996 and the order dated 16/7/1996 passed by the Deputy Collector.

Cancellation of mutation entry No. 1232 dated 23.2.1974 in respect of land bearing Survey No. 112/3/1 of village Rangaipura,Taluka Petlad admeasuring 3 Acres 01 Gunthas is the subject matter of this petition. The land originally stood in the name of Maganbhai Fulabhai Patel. It appears that on the basis of a statement given in the Vardhibook for entering the names of the present petitioner as others as co-parceners, mutation entry No. 1232 was made on 23.2.1974 in the village records. On the death of Maganbhai Fulabhai Patel, his widow, Kashiben, respondent No.2 herein, went for getting succession entry effected when she

came to know about mutation entry No. 1232. She, therefore, filed an appeal on 30.4.1993 being RTS Appeal No. 56 of 1996 before the Deputy Collector which was rejected by the Deputy Collector on 16.7.1996. Aggrieved thereby, she preferred a Revision Application on 2.8.1996 before Collector, Kheda being RTS R.A. 76/96. The said Revision Application was allowed by Collector, Kheda whereby the order passed by the Deputy Mamlatdar approving mutation entry No. 1232 as well as the order passed by the Deputy Collector, Petlad on 16.7.96 were set aside. The petitioner herein carried the matter in Revision, being Revision Application No. 35 of 1997, before the Special Secretary, Revenue Department, Gujarat. Additional Chief Secretary [Appeal] rejected the revision application and confirmed the order passed by the Collector setting aside the order of Deputy Mamlatdar approving mutation entry No. 1232.

Learned advocate Mr. A.J. Patel for the petitioner submitted that the revisional authority ought to have appreciated that the mutation entry No. 1232 was entered as back as on 23.2.1974 and a considerable period of 24 years having passed by, the same could

not have been ordered to be corrected. He further submitted that even the first challenge to mutation entry No.1232 was made only on 30.4.1996, i.e., after a period of 22 years, and therefore, looking to the time gap, even that application ought not to have maintained. He further submitted that in any event, an entry in the revenue records does not give any title to any person and the said entry is only for the purpose of collection of revenue and other fiscal purposes and the civil rights of the parties cannot be decided while deciding the validity or otherwise of a mutation entry. He further submitted that if there is any dispute as to the title of the land in question, the aggrieved party may file appropriate civil proceedings as per law. Mr. Patel also relied on the judgment in STATE OF GUJARAT VS. RAGHAV NATHA, 10 GLR 992. While considering the question of "reasonable time" for taking any matter in revision, the Supreme Court held as under in paragraph 12:

> "12. The question arise whether the Commissioner can revise an order made under sec. 65 at any time. It is true that there is no period of limitation prescribed under sec. 211, but it seems to us plain

that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised."

Mr. A.J. Desai, learned Assistant Government Pleader supported the order passed by the Collector and the Revisional authority and submitted that looking to the facts and circumstances of the case, this Court may not interfere with the orders.

Mr. Oza, on the other hand submitted that as soon as the respondent No.2, widow of the deceased original owner of the land, came to know that the land has been mutated in favour of some other persons, she has moved the authorities and therefore there cannot be stated to be any delay on the part of the respondent herein, and, therefore the orders passed by the Collector and the revisional authorities need no interference.

Heard learned advocates appearing in the matter. It is required to be noted that posting of revenue entry has no relevance

with the question of title over the property, but it will have only presumptive value and that too in connection with possession of the property in question. In the instant case, the case of the respondent is that before posting the revenue entry, no notice is given to her as required by the Land Revenue Code. Through the Collector, Kheda allowed the Revision of respondent No.2 on the ground that since the order of posting entry in favour of respondent is nullity, the question of limitation is not relevant. I find substance in the argument of Mr. Patel that question of limitation applies even to a transaction which is not valid or void. However, since question of posting entry does not confer any right in favour of anybody, the petition is required to be disposed of with a direction that whatever entry is posted in the revenue record on the basis of the impugned orders shall be subject to the final outcome of any proceedings pending between the parties. If any proceedings are pending before any authority or before any Court, the impugned entry will have no effect and such proceedings are required to be decided on its own merits and in accordance with law. In short, the posting of the revenue entry in favour of respondent No. 2 shall not confer any right in the property in favour of respondent No.2,

as such entry will have only presumptive value and it will not confer any title simply because an entry is posted in favour of the respondent. If any dispute of title is pending, it has to be disposed of on merits without being influenced by the order passed in the present case.

This petition is disposed of accordingly. Rule is discharged, with no order as to costs.

[P. B. MAJMUDAR, J.]

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